

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5890

PETITION OF MICHAEL G. HERLIHY AND PAULA C. LEONARDO

(Hearing held June 11, 2003)

OPINION OF THE BOARD

(Effective date of Opinion, July 18, 2003)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-.1.323(b)(1). The petitioners propose to construct a second-story addition that requires a one (1) foot variance as it is within six (6) feet of the side lot line setback. The required setback is seven (7) feet.

The subject property is Lot P12, Block O, Crestview Subdivision, located at 4810 Westway Drive, Bethesda, Maryland, 20814, in the R-60 Zone (Tax Account No. 00479003).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a second-story addition.
2. The petitioners testified that the existing single-family dwelling is located in the property's eastern side yard. The petitioners testified that they propose to partially replace the existing attic with a second-story addition and that the addition will not extend beyond the footprint of the existing residence.
3. The petitioners testified that the height of the proposed addition will match the peak of the existing roof and that the residence abuts a public alley at its northern and eastern boundaries. The proposed addition will abut the public alley. See, Exhibit No. 7 (zoning vicinity map).

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a

specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The existing single-family dwelling is located in the property's eastern side yard. The proposed addition will not extend beyond the footprint of the existing residence. The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the regulations would result in practical difficulties to the property owners if the variance were to be denied.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the second-story addition is the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed addition will abut a public alley and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of one (1) foot from the required seven (7) foot side lot line setback for the construction of a second-story addition is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and (4(b) and 5(a) through 5(h).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Allison Ishihara Fultz, with Donna L. Barron, Louise L. Mayer and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 18th day of July, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.